IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1135 of 2006

Date of Decision: 2.8.2007

Hukam Ram … Petitioner

Versus

State of H.P. & ors. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?

For the Petitioner : Mr. B.N. Mishra, Advocate.

For the Respondent : Mr. M.S.Chandel, Advocate General with Mr. J.S.Guleria, Law Officer, for respondents 1to 3.

Mr. Ashok Sharma, Advocate for Respondent No.5.

Deepak Gupta, J (Oral).

This writ petition is directed against the order of the learned H.P. State Administrative Tribunal in O.A. No. 2718 of 2002 decided on 18.10.2006.

The brief facts necessary for decision of the case are that the present petitioner as well as respondent No.5 had applied for the post of part-time Water Carrier in Government Primary School,

Daplad. Interviews for this post were held on 23.7.2002. The selection process for the selection of part-time water carrier is specified in the Scheme which provides for specific number of marks under the specified heads.

The distribution of the marks to be awarded to the candidates on account of distance of the residence of the candidate to the school is as follows:-

1. For candidates of village/ town at distance:

a. Upto 1 kms from school	10 marks
b. Upto 2 kms from school	8 marks
c. Upto 3 kms from school	6 marks
d. Upto 4 kms from school	4 marks
e. Upto 5 kms from school	2 marks.

The petitioner was granted 10 marks under the aforesaid heads and was selected. Respondent No.5 filed an Original Application before the learned Tribunal alleging that the house of the petitioner is at a distance of 4.2 kms from the school and, therefore, 10 marks had wrongly been awarded to him.

Notice of the Original Application was sent to the present petitioner but he did not appear and was proceeded against ex parte. The official-respondents who filed the reply did not seriously contest the allegation of the respondent No.5 that the distance from the school of the petitioner was 4.2 kms. The respondent No.5 along with this OA filed a certificate issued by the Assistant Engineer, B & R, Sub Division, Nirmand to the effect that the distance between Bandal (where the house of the petitioner is

situate) and the Daplad (where the school is situate) is 4.2 kms (by road). On the basis of this certificate, the learned Tribunal came to the conclusion that the petitioner would have been entitled to only 2 marks and he had wrongly been awarded 10 marks and, therefore, allowed the O.A. filed by the despondent No.5. The learned Tribunal set aside the selection of the petitioner and directed the respondents to constitute a fresh Committee for holding interviews of the candidates who had participated in the interviews held on 23.7.2002 and the Selection committee be directed to hold selection process strictly in accordance with the Scheme Annexure A1. This order has been challenged by the petitioner.

The petitioner contends that the certificate produced by respondent No.5 before the learned Tribunal and relied upon by the Tribunal only reflects the distance by road but in actual fact the distance by foot-path from his house to the school is only 500 metres. Unfortunately, the petitioner had not contested the petition before the learned Tribunal. The learned Tribunal has decided the matter on the basis of the material before it and it would not be appropriate for us to set aside the order the Tribunal on fresh material which is now sought to be placed before us. We, therefore, reject this writ petition. However, we direct that when the matter is considered by the fresh Selection Committee, the Selection Committee shall itself verify the distance of the house of the present petitioner from the school. If the Committee so desires, It may verify the distance from the houses of all the candidates to the school. This measurement shall be made as per the norms

specified in the Scheme Annexure A1. The Committee shall not be bound by the earlier certificate relied upon by the learned Tribunal. The Committee shall make its fresh assessment on the basis of the material placed before it by the parties.

With the aforesaid directions, the writ petition is disposed of. No order as to costs.

(Deepak Gupta), J.

August 2, 2007. (V.K.Ahuja), J.

s.